Franchise Tax Board

SUMMARY ANALYSIS OF AMENDED BILL

Author:	Nava, et al.	Analyst:	Angela Raygoza	Bill Number:	AB 50
Related Bills:	See Prior Analysis	Telephone:	845-7814	Amended Date:	August 20, 2010
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Disaster Loss Deduction/Excess Loss Carryover/August 2009 Placer County And July 2010 Kern County Wildfires

_____ DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended ___________________.

__X__ AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

_____ AMENDMENTS DID NOT RESOLVE THE DEPARTMENTS CONCERNS stated in the previous analysis of bill as amended ___________.

_____ FURTHER AMENDMENTS NECESSARY.

_____ DEPARTMENT POSITION CHANGED TO ____________________.

__X__ REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED, December 1, 2008, STILL APPLIES.

__X__ OTHER – See comments below.

SUMMARY

This bill would allow special tax treatment, called disaster loss treatment, for losses sustained as a result of the wildfires that commenced in August 2009, in Placer County and July 2010, in Kern County.

SUMMARY OF AMENDMENTS

The August 20, 2010, amendments added a new section to eliminate conflict with other disaster loss bills and added language that would add the wildfires that commenced in July 2010 in Kern County to the specified list of disasters.

As a result of the amendments, the “Program Background,” “This Bill,” “Legislative History,” and “Economic Impact” discussions, as provided in the department’s analysis of the bill as amended April 22, 2010, have been revised. The amendments resolved the technical consideration in the prior analysis. The “Law” and “Effective/Operative Date” discussions of the original bill analysis dated December 1, 2008, still apply, and have been provided below for convenience.

Board Position:			Asst. Legislative Director	Date
_______ S	_______ NA	_______ NP		
_______ SA	_______ O	_______ NAR	Patrice Gau-Johnson	08/31/10
_______ N	_______ OUA	___X___ PENDING		

EFFECTIVE/OPERATIVE DATE

As an urgency measure, this bill would be effective and operative immediately upon enactment.

ANALYSIS

FEDEREAL/STATE Law

Under federal and state law, a casualty loss is defined as the damage, destruction, or loss of property resulting from an identifiable event that is sudden, unexpected, or unusual. A disaster loss occurs when business or personal property is completely or partially destroyed as a result of a fire, storm, flood, or other natural event in an area declared to be a disaster by the President of the United States.

Existing federal and state laws allow an individual taxpayer with a non-business casualty/disaster loss that is not reimbursed, by insurance or otherwise, may deduct such losses to the extent that each loss exceeds $100 and aggregate net losses for the taxable year exceed 10 percent of adjusted gross income. Additionally, a taxpayer can elect to file an amended return to deduct a casualty loss in the taxable year prior to the loss year to receive a refund more quickly. However, this election only applies to casualty losses occurring in a Presidentially-declared disaster area. This election may be made for any Presidentially-declared disaster prior to passage of any state legislation allowing special carryover treatment because California conforms to federal disaster tax law treatment. The election is not available for a Governor-only declared disaster until enabling state legislation has been enacted.

State tax law[1] identifies specific events as disasters and excess disaster losses are allowed special carry forward treatment. That is, 100 percent of the excess disaster loss may be carried over for up to 15 taxable years. In addition, for disasters that were the subject of a Governor's proclamation but not the subject of a Presidential disaster declaration, enactment of state law identifying a specific event as a disaster for state tax law purposes authorizes the taxpayer to elect to deduct the disaster loss on the return for the prior taxable year.
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ANALYSIS

PROGRAM BACKGROUND

On August 30, 2009, Governor Arnold Schwarzenegger proclaimed a state of emergency declaring the wildfires that occurred in Placer County to be a state disaster. On July 28, 2010, Governor Arnold Schwarzenegger proclaimed a state of emergency declaring the wildfires that occurred in Kern County to be a state disaster. As of August 24, 2010, President Barack Obama has not proclaimed a federal disaster for either wildfire.

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[1] AB 1452 (Stats. 2008, Ch. 763) disallows net operating loss deductions by suspending them for taxable years 2008 and 2009 for a taxpayer with net business income of $500,000 or more.

THIS BILL

As a Governor-proclaimed disaster, this bill would allow taxpayers affected by the August 2009 Placer County and July 2010 Kern County wildfires to elect to file an amended return for the prior taxable year to deduct the disaster loss and reduce the prior year tax liability, resulting in an expedited refund. This bill would also allow special carry forward treatment for up to fifteen taxable years for losses sustained as a result of the wildfire.

LEGISLATIVE HISTORY

AB 79 (Duvall, 2009/2010) would allow taxpayers disaster loss treatment for losses sustained as a result of the wildfires that occurred in the Orange County during November 2008. This bill was held under submission in the Senate.

AB 1662 (Portantino, et al., 2009/2010) would allow disaster loss treatment for losses sustained as a result of the severe winter storms in January 2010 in the Counties of Calaveras, Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Francisco, and Siskiyou. This bill is currently located in the Senate for third reading.

AB 1690 (Chesboro, et al., 2009/2010) would allow disaster loss treatment for losses sustained as a result of the earthquake that occurred on January 9, 2010, in Humboldt County. This bill is currently located in the Senate for third reading.

AB 2136 (V. Manuel Perez, et al., 2009/2010) would allow disaster loss treatment for losses sustained as a result of the earthquake that occurred in April 2010 in Imperial County. This bill is currently located in the Senate for third reading.

ECONOMIC IMPACT

Revenue Estimate

The revenue impact from this bill would be as follows:

Estimated Revenue Impact of AB 50 As Amended August 20, 2010 Assumed Enacted September 30, 2010				
Fiscal Impact	2009-10	2010-11	2011-12	Cumulative Total
Placer County	-$2,000	+$1,000	+$1,000	$0
Kern County	-$3,000	+$1,000	+$1,000	$0

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